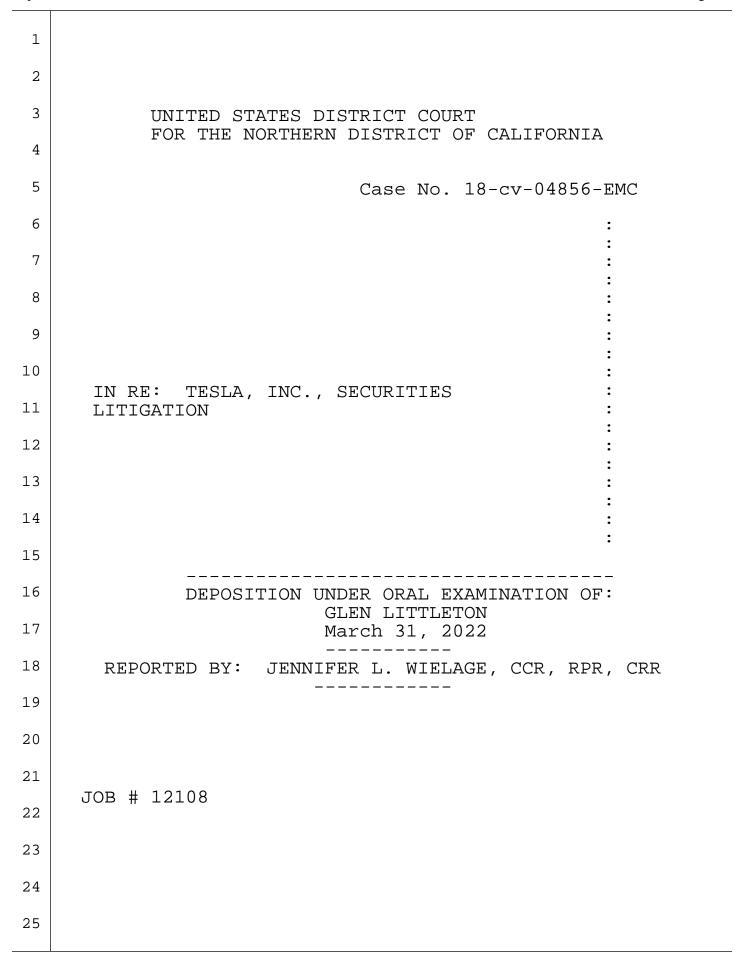
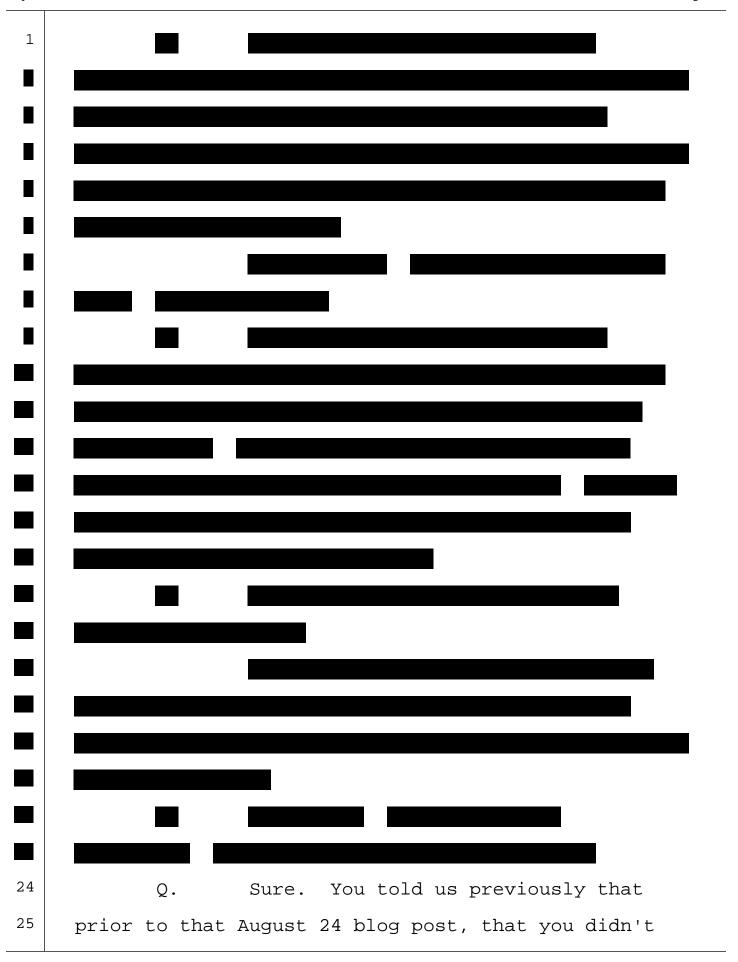
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14	Antonio J. Gracias, James Murdoch, Kimbal Musk,				
15					
1.					
16	UNITED STAT	ES DISTRICT COURT			
17					
.	NORTHERN DIS'	TRICT OF CALIFORNIA			
18					
19					
	IN RE TESLA, INC. SECURITIES	Case No. 3:18-cv-04865-EMC			
20	LITIGATION				
21		DEFENDANTS' FILING OF DEPOSITION			
_		DESIGNATIONS AND IMPEACHMENT CLIPS PLAYED DURING TRIAL			
22		CLIPS PLAYED DURING TRIAL			
23					
24					
25					
26					
27					
28					

Case No. 3:18-cv-04865-EMC

DEPOSITION DESIGNATIONS PLAYED DURING TRIAL

## Exhibit A





22

23

24

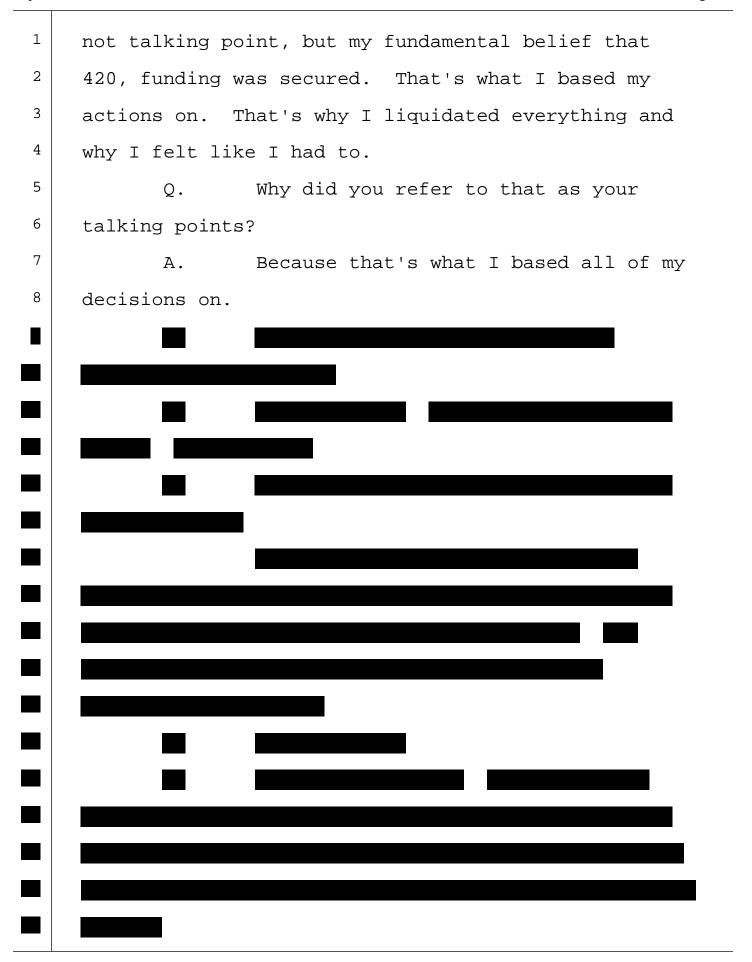
25

see anything between August 7th and August 24th that changed your mind that the go-to private transaction			
changed your mind that the go-to private transaction			
at 420 per share was a done deal?			
A. No, that's			
Q. Is that right?			
A. That's correct, yes.			
Q. Is it also correct that you didn't			
see anything then prior to August 24th that changed			
your mind that the funding was secure?			
A. You know, I can't recall. I really			
don't recall. There was an awful lot of news about			
it. There were an awful lot of opinion pieces. And			
sometimes it's hard to separate these opinion, pieces			
in the Wall Street Journal and the Bloomberg, from a			
report a reporting article. So I can't recall.			
Q. Would you have thought that the go-to			
private transaction at 420 per share was a done deal			
if you did not think funding was secure?			

A. I wish -- you're doing your job.

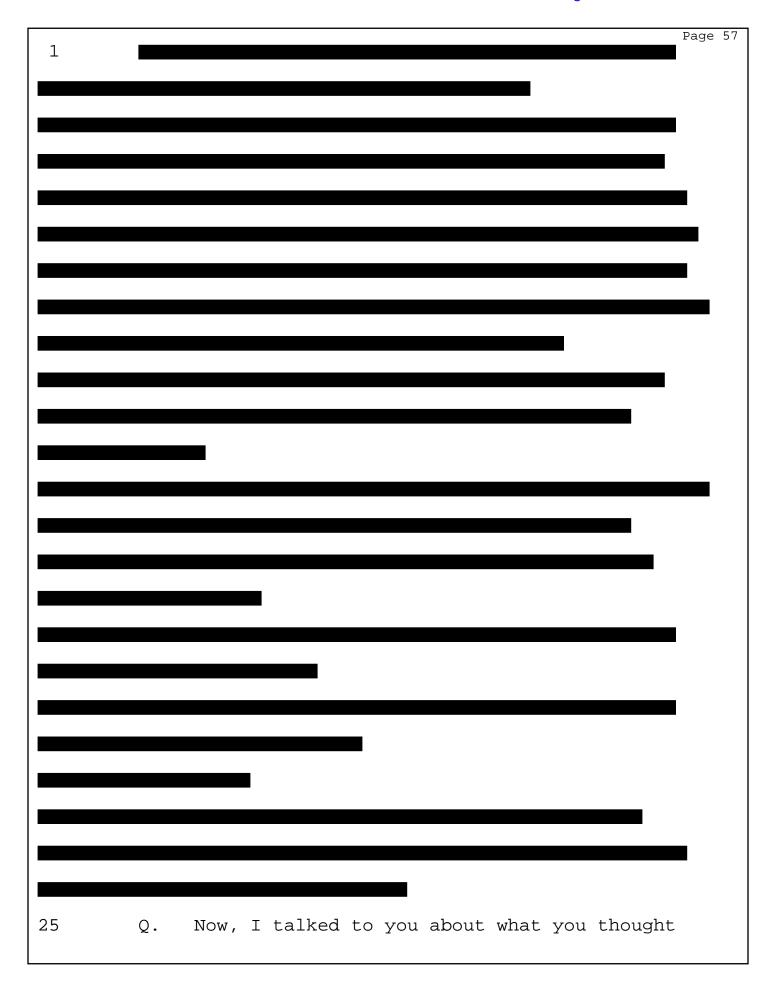
You're trying to ask a question in many different ways.

I revert back to my talking points --

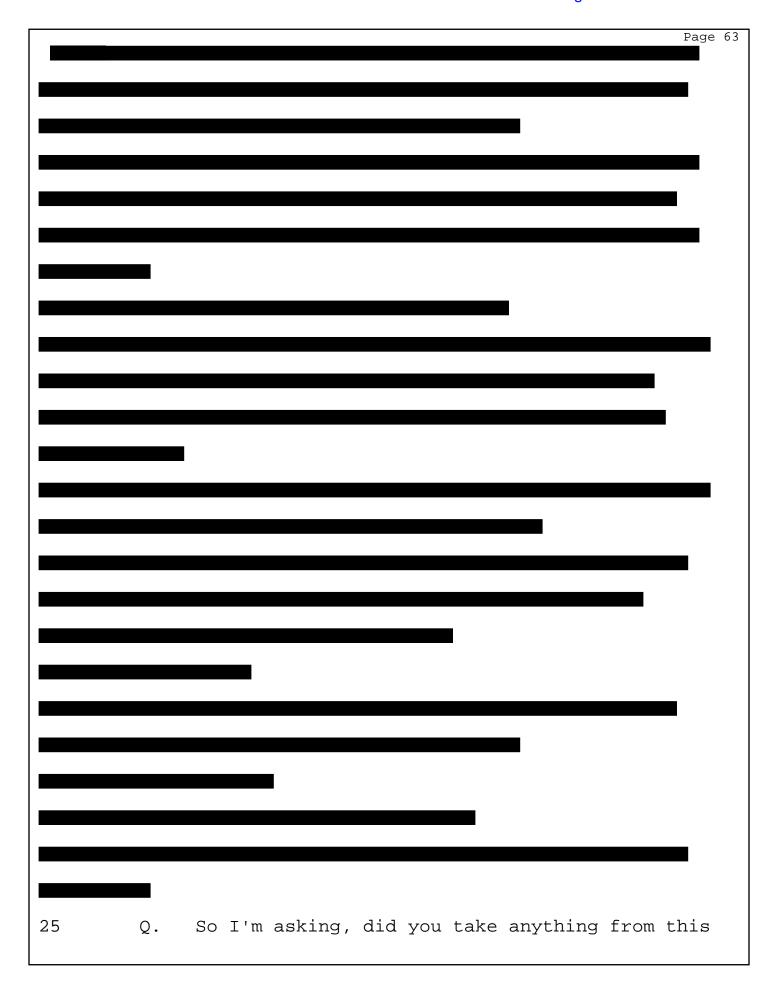


## Exhibit B

```
Page 1
 1
                   UNITED STATES DISTRICT COURT
 2
             FOR THE NORTHERN DISTRICT OF CALIFORNIA
     In Re: Tesla, Inc., Securities )
 4
 5
     Litigation.
                                      ) No. CV-18-04865-EMC
 6
                                      )
 7
 8
 9
10
                         September 23, 2022
11
                         11:16 a.m.
12
                         Flemington, New Jersey
13
14
              REMOTE VIDEOTAPE DEPOSITION OF
15
              TIMOTHY FRIES (On behalf of Plaintiffs)
16
              Taken on behalf of the Defendant before
17
     Michael J. D'Amato, RMR, Notary Public in and for the
18
     State of Florida at Large, pursuant to Notice of Taking
19
20
     Deposition in the above cause.
21
22
23
24
25
     Job # 217595
```



Page 58 vetted meant. Can you tell me your understanding of 1 what the process of vetting would have looked like? That is, what would you think would have been done to 3 vet? 4 5 Just Tesla and Elon ensuring that the finances that were stated were available. 6 7 Did you have any understanding as to how Tesla or the board of directors of Tesla would go about doing 8 that? 9 10 No. Α.



- 1 as to whether or not that company had actually made a
- 2 commitment to provide the funding to take Tesla private
- 3 for 420?
- 4 A. I didn't consider that.
- 5 Q. So the way you understood this is that Tesla
- 6 and Mr. Musk had vetted to make sure that the company
- 7 had the financial ability to take Tesla private but --
- 8 A. And that -- ok, go ahead.
- 9 Q. -- but that -- but it wasn't saying that that
- 10 company had necessarily committed to making that
- 11 investment?
- 13 A. My understanding was that they had an interest
- 14 in purchasing Tesla to take them private and they had
- 15 the financial means to do that.
- 16 Q. You said your understanding was that the
- 17 company had an interest in purchasing Tesla to take
- 18 them private and they had the financial means to do
- 19 that. Did you take from this Tweet, Exhibit 8 here,
- 20 that that company had already made the commitment to do
- 21 that, that is, not only do we have the interest and the
- 22 means but we are going to do it?
- 24 A. I believe -- my understanding was they were
- 25 committed to doing it.

23

9 Q. I guess what I want to narrow down is, you 10 said this a few times and I want to see if this Tweet meant anything else to you. You said and I'm 11 12 reading -- I have a transcript of what you just said 13 here, it is called real time. 14 "My thinking is for the funding to be secured 15 that they would have expressed a strong interest and 16 they would have been vetted by Tesla and Tesla would 17 have come to the understanding that those funds were 18 available." 19 Did this Tweet mean anything else to you with 20 respect to whether or not the company that was going to 21 provide funding had actually made the commitment to do 22 so?

No, it didn't mean much more than what I've

24

25

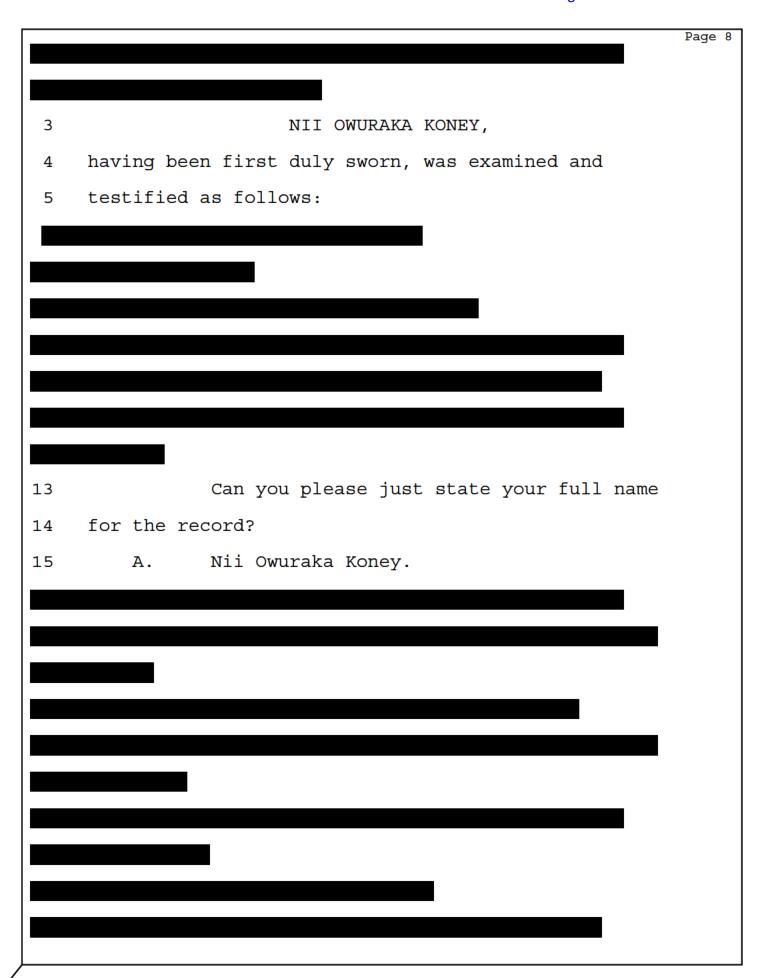
Α.

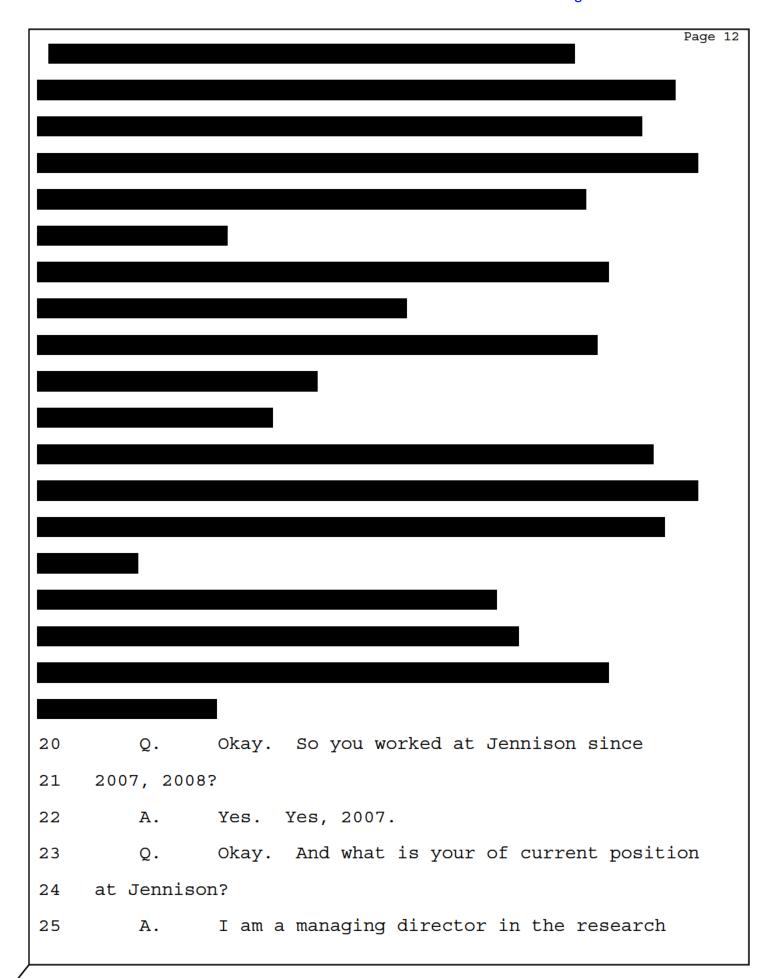
already explained.

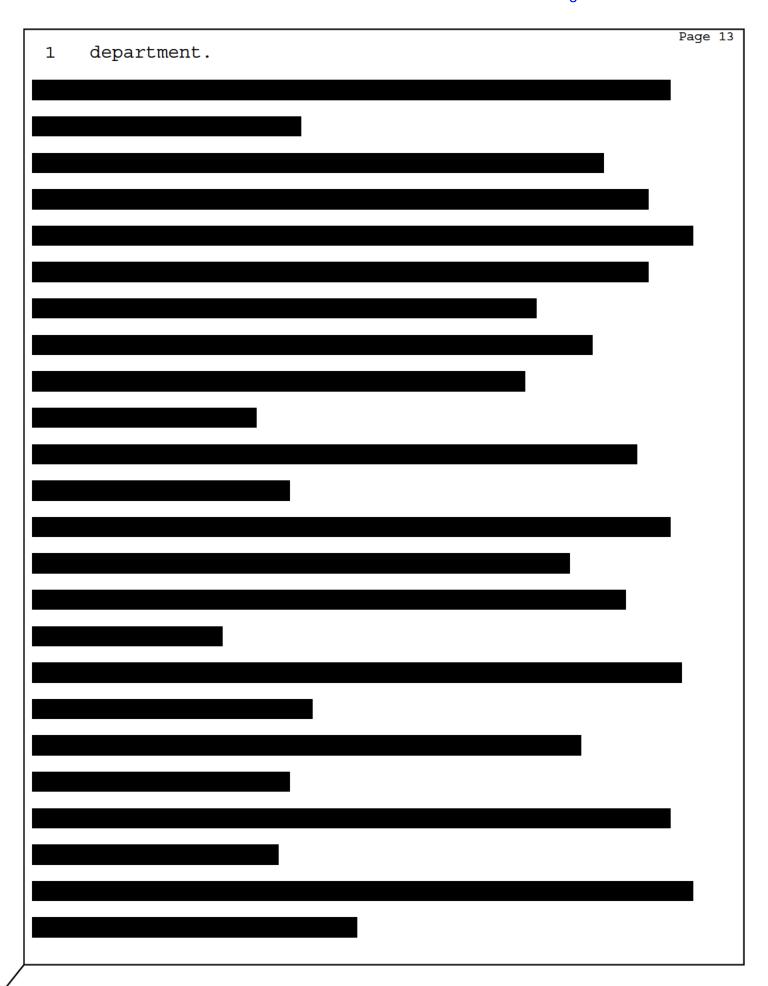
Page 69 If as of August 7th, the time of that Tweet, 8 Q. Exhibit 8, as of that time the board of directors was 9 still in the process of taking steps to evaluate the 10 proposal to take Tesla private at 420, would that in 11 your mind make the statements in that Tweet false or 12 misleading? 13 I don't think so. 14 Α. 15 Q. Why not? 16 Because it hadn't been closed yet. Α.

## Exhibit C

		Page 1
1	UNITED STATES DISTRICT COURT	
2	FOR THE NORTHERN DISTRICT OF CALIFORNIA	
3	SAN FRANCISCO DIVISION	
4	IN RE TESLA, INC., Civil Acton No.	
5	SECURITIES LITIGATION 3:18-cv-04865-EMC	
6		
7	CONFIDENTIAL	
8		
9	Virtual Videotape Zoom Deposition Of Nii Owuraka Koney	
10	July 14, 2021 At 10:00 a.m.	
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22	Reported by LeShaunda Cass-Byrd, CSR, RPR	
23	TSG Job No. 196498	
24		
25		







Page 21 Okay. In the tweet contained here in 20 Q. Exhibit 8, the second sentence, it says funding 21 secured. 22 Do you see that there? 23 24 Α. Yes. Do you recall what your understanding of 25 Q.

1	what funding secured meant when you first read this
2	tweet?
3	A. It was not clear to me what funding secured
4	meant. It wasn't clear whether it was a verbal
5	commitment or whether they had an offer letter of some
6	sort.

Page 56 So what would be the difference between a 15 Q. verbal commitment and an offer letter? 16 THE WITNESS: Again, I -- again, like 19 my general view was that the money was out 20

my general view was that the money was out
there for them to go private. I mean, just
cash among the sovereign world funds and a
bunch of investment funds that invest in
private companies. And so I wanted to know
what that source of funding was. That was

the basis of my question.

- 9 Q. What I'm trying to get at is you -- you've
- 10 testified that there was a lot of, you know, cash out
- 11 there and still is for potential investment in a
- 12 private company; is that fair?
- 13 A. Yes.
- 14 Q. And what -- what extra information on top
- of that fact is -- are the words "funding secured"
- 16 from Mr. Musk adding to that did you -- did you think
- 17 at the time on August 7th, 2018?
- A. Well, I wasn't sure what it meant, which is
- 19 why I inquired as to whether there was a verbal
- 20 commitment or whether there was an actual offer letter
- 21 that they had.
- Q. And to go back, would it make a difference
- 23 to you if it was a verbal commitment versus an offer
- 24 letter?
- 25 A. It's hard to say within the context of just

- 1 how much cash is available out there. I was never
- 2 concerned about their ability to go private.
- Again, my view -- I have a very strong view
- 4 that they should stay public, that they should not go
- 5 private.
- 6 Q. If you go back to Exhibit 58, please, and
- 7 you -- there is an e-mail -- the next e-mail chain up
- 8 on the chain is, again, from Martin Viecha. And it
- 9 says: The very first tweet simply mentioned, quote,
- 10 funding secured, close quote, which means that this is
- 11 a firm offer.
- 12 Do you see that?
- 13 A. Yes.

- 17 Q. So then you -- then you continue in Exhibit
- 18 58: The firm offer means there is a commitment
- 19 letter, or is this a verbal agreement?
- 20 Do you see that?
- 21 A. Yes.
- 22 Q. Again, does this confirm or refresh your
- 23 recollection that you had a difference in your mind
- 24 between a commitment letter or a verbal agreement?
- 25 A. I think, again, it was just me trying to

Page 59 get clarification on what firm offer means. What did you understand Mr. Viecha's Q. statement "the offer is as firm as it gets" to mean? As you can see in my reply to him, I said 10 Α. we will need a little more than that, which means I 11 had no idea what he meant. 12 What is your understanding of a firm offer 13 Q. of funding? 14 17 THE WITNESS: Again, I wasn't clear whether they defined a firm offer as a 18 commitment letter or verbal agreement. 19

	MR. PORRITT: Okay. All right. Can	
	we bring up JENN 90, Elizabeth?	
2	MS. TRIPODI: It should be there.	
3	(Plaintiff Exhibit 61 was marked for	
1	identification.)	
-	ruencificación.	

Page 68 5 Okay. So the bottom e-mail on Exhibit 61 Q. is an e-mail from Mr. Baribeau to you stating: Hi, 6 should we be selling here? The story could unravel 7 quickly if Elon is found to be lying about the, quote, secured, close quote, financing for buyout. 9 Do you see that? 10 11 Α. Yes.

Page 70 10 Q. Okay. So you got -- Mr. Baribeau responds back to you: Assuming he has the funding, yes, but 11 there is no evidence of that. 12 13 Do you see that? Yes. 14 Α. 15 Q. Did you believe there was no evidence of funding as of 9:36 a.m. on August 9th, 2018 in 16 connection with the potential Tesla go-private 17 transaction? 18 THE WITNESS: In my reply, I said 20 they haven't disclosed a source of funding 21 yet, very different from no evidence of 22 funding. 23 25 So you disagreed with Mr. Baribeau on that Q.

- 1 point?
- 2 A. What I was trying to highlight is that --
- 3 and to the earlier back and forth I had with Martin
- 4 Viecha -- is trying to figure out what that source of
- 5 funding was within the context of knowing that there
- 6 is so much cash out there on the market available to
- 7 take them private.
- 8 Q. So you say: What we have is Elon's
- 9 statement on funding secured.
- 10 Do you see that?
- 11 A. Yes.

- Q. Was it important to you that the CEO of
- 21 Tesla had said that funding was secured publicly?
- 22 A. Yes.
- Q. And then you have here: Which IR confirmed
- 24 is accurate.
- Do you see that?

Page 72 1 Α. Yes. Is that referring to your e-mail exchange Q. that Mr. Viecha that we were looking at in Exhibit --3 bear with me -- Exhibit 58? 4 I believe so. I assume so, yes. 5 And that -- in that exchange, Mr. Viecha 6 Q. 7 told you that the offer was as firm as it gets. that what Mr. Viecha told you? If that's what it states, yes. 9 Α.

- 3 Q. And what is your understanding of -- you
- 4 just used it again, and we've used it a bunch today --
- 5 verbal agreement?
- 6 What is your understanding of what -- well,
- 7 what do you mean when you say verbal agreement?
- 8 A. That he has spoken to someone, or investors
- 9 who have said they would be willing to take Tesla
- 10 private, and for him -- again, this is my assumption.
- 11 As I stated in this e-mail, it's an assumption upon an
- 12 assumption, so there's a lot of uncertainty. And --
- and so I just wanted to get -- that's why I wanted to
- 14 get some clarity on what I wasn't sure about.

11 Q. And it's your view that it's potentially 12 premature for Mr. Musk to announce the potential

transaction?

13

24

25

15 THE WITNESS: That's a tough one because I don't think Elon -- Elon could 16 have approached Jennison before making it 17 public, that he wanted to take Tesla 18 private, because that would have exposed us 19 to MNPI, material nonpublic information, 20 which would have restricted our ability to 21 trade the stock. And so if the -- if the 22 plan was to have shareholders hold onto 23

their stock in a private company, the only

way to do it is to make it public to

		Page 84
1	everyone that this is what he wants to do	
2	before engaging with us. We would not have	
3	engaged with him beforehand.	
		_

- 5 All right. So I placed before the
- 6 witnesses, a document marked as Exhibit 66.
- 7 (Plaintiff Exhibit 66 was marked for
- 8 identification.)
- 9 BY MR. PORRITT:
- 10 Q. It's Bates stamped SEC-EPROD-000009476. It
- 11 also has JENN 000001 in the bottom right-hand corner.
- Do you recognize this document, Exhibit 66,
- 13 Mr. Koney?
- 14 A. Yes.
- 15 Q. What is this document?
- 16 A. It looks like notes -- I'm a terrible note
- 17 taker by the way -- that I took on the call with Elon.
- 18 Q. So these are notes that you typed at the
- 19 time?
- 20 A. Yes.
- Q. Okay. And you typed them while
- 22 participating in the call or afterwards?
- 23 A. I cannot say with certainty, but I believe
- 24 it would have been during the call. But I can't say
- 25 that with absolute certainty.

Page 101 Okay. If you made them afterwards, would 1 Ο. it be shortly after the call? 3 Α. Yes. Okay. And then what is the purpose of you 4 taking these notes? 5 To memorialize the discussion. 6 Α. 7 Q. Okay. Did you take notes every time you spoke to the CEO of a portfolio company that you follow? 9 Most of the time. I can't say all of the 10 Α. time. 11 Okay. But it's your general practice to do 12 Q. that? 13 14 Α. Yes. Okay. What do you recall Mr. Musk telling 24 Q. you during this call? 25

Page 102

- Well, strike that.
- 2 How did the call start?
- 3 A. Based on my notes, it seems like the call
- 4 started with Elon explaining his reasons for wanting
- 5 to take Tesla private.
- 6 Q. All right. Is that what you recall --
- 7 first of all, do you have any -- sitting here today,
- 8 do you have any recollection of this call?
- 9 A. I mean, yes. I remember doing the call. I
- 10 don't remember all of the details of the call outside
- 11 of the notes that I have.
- 12 Q. Okay. After having reviewed these notes --
- 13 have you had a chance -- have you read all of your
- 14 notes is Exhibit 66 now?
- 15 A. I have skimmed through most of it, you
- 16 know, as I've been speaking.
- 17 Q. Why don't you just take a moment, just
- 18 to -- why don't you just read it from the top to
- 19 bottom. It's only one page, and then we'll see if
- 20 that refreshes any recollection about what you recall
- 21 about the call.
- 22 A. Okay. I have read it.

Page 103 In the next section there in Exhibit 66, 12 Q. you've got a reference there to SWF? 13 14 Α. Yes. SWFs, small s. 15 Q. 16 Α. Yes. What's SWF referring to? 17 Q. Sovereign World Fund. 18 Α. Okay. So you continue: Wouldn't want to 19 Q. have too big a stake from one or two funds as they may 20 push Tesla to optimize for their country rather than 21 the world. 22 23 Do you see that? 24 Α. Yes. 25 So that reflects comments made by Mr. -- by Q.

1	Elon Musk?	Page 104
2	A.	Yes.
3		Okay. What what
4	A.	Not not verbatim comments, right? That
5	is a summa	ry of the essence of what he was saying.

Page 107 And then you on saying: Getting to a scale 18 Q. where it would be difficult to take the company 19 private. Last opportunity. 20 Do you see that? 21 22 Yes. Α. What -- what was -- what did Mr. Musk say 23 Q. that led you to write these notes? 24 He must have said something to that extent, 25 Α.

Page 108

- 1 which actually aligned with my view that they had the
- 2 funding available to go private at the \$70 billion
- 3 valuation but at a higher price, significantly higher
- 4 price, they would have the funding available to go
- 5 private.

- Q. So was it your understanding, after this
  conversation with Mr. Musk, on August 10th, 2018, that
  they did have the funds to make it possible at an
  approximately \$70 billion valuation but not if it went
  higher?
- 19 A. It was my view that they had the capacity
  20 to get those funds. And as I -- as I have expressed
  21 early, I think there was also a New York Times article
  22 that came out that pointed out that they did have the
  23 capacity to get the funds to take Tesla private around
  24 that valuation.

Page 134 Backing you, can you explain what it is 15 that Jennison Associates does? 16 20 THE WITNESS: Okay. We are an asset 21 manager. So on a large track growth team, we have a mandate to invest in growth 22 companies. And so we have a team of 23 portfolio managers and analysts. Analysts 24 25 cover specific sectors, and they are

Case 3:18-cv-04865-EMC Document 664 Filed 02/03/23 Page 43 of 52 Page 135 responsible for finding companies within 1 their specific coverage that meets the mandate. 3 13 Ο. So just to put it in simpler terms, Mr. Koney, am I correct that Jennison Associates 14 invests money on behalf of its clients? 15 16 Α. Yes. And as an analyst, your role is to try to 17 Q. help the portfolio managers make decisions about what 18 stocks to buy and sell and when in an effort to 19 maximize returns; is that correct? 20

Generally speaking, yes.

try as best you can, to predict whether a given stock

is going to go up or down over the long term; is that

Okay. And in other words, your job is to

21

22

23

24

25

Α.

Ο.

fair?

1	Α.	Yes.	Page 136
2	Q.	Okay. It's not easy to do, is it?	
3	Α.	Not at all.	

Page 154 13 Ο. Okay. Let me ask you to turn to Exhibit 68. It's the one that is labeled JENN 147. 14 15 Α. I have it up. This is your e-mail forwarding the August 16 Q. 13th, 2018 blog post by Mr. Musk? 17 Uh-huh (affirmative). 18 Α. When you were speaking to go Mr. Porritt 19 Q. earlier, you -- you wanted to make the point I think 20 that your point about buying more shares at these 21 levels was based on the current price level and your 22 long-term views about the business. It was not based 23 24 on the blog post. 25 Did I understand that correctly?

											Page	155
1	Α.	Yes,	it	was	not	based	on	the	blog	post.		
											_	

Page 157 And I think you testified earlier that 20 nothing in this blog post changed your view about the 21 likelihood of a going-private transaction occurring; 22 is that fair? 23 THE WITNESS: Yes. My view on the 25

Page 158 1 likelihood of a go-private transaction was 2 not -- was not influenced by -- that's the wrong word. I already viewed -- I already 3 believed that Tesla had the capacity to go 4 private at that price point. I was just 5 6 adamantly opposed to them going private. 7 BY MR. GIBBS: Understood. And so to put a finer point on 8 0. it, nothing in this August 13th blog post changed your 9 view about the likelihood or the ability of Mr. Musk 10 to arrange financing for a take-private transaction at 11 a price of \$420 per share; is that correct? 12 13 Α. I can't give a -- I can't say definitively, 14 I was not influenced in any way by this blog post. 15 view prior to this blog post was that they had the capacity to do it and also enough cash available for 16 them to go through -- to take the company private. 17 can't go back -- I don't remember my thinking during 18 19 that period after I read this blog post, what my 20 immediate reaction was. What I do know with certainty was that I had that view before this blog post. 21 22 Okay. So let me -- let me just try a 0. 23 slightly different word and see if I can get it right. 24 Immediately after Mr. Musk's August 7th

tweet about considering taking Tesla private at a

25

Page 159

- 1 price of \$420 per share, you believed that there would
- 2 be funding available for such a transaction; is that
- 3 fair?
- 5 THE WITNESS: Yes.
- 6 BY MR. GIBBS:
- 7 Q. And nothing in this August 13th blog post
- 8 changed your view about the availability of funding
- 9 for such s transaction; isn't that fair?
- 10 A. Again, my view did not change, so that is
- 11 accurate. What I don't remember is if this gave me
- 12 higher conviction that the funding was available, if
- 13 that makes any sense.
- 14 Q. It does.
- And so this might have made it seem even
- 16 more likely that funding was available, but it
- 17 certainly didn't make it seem less likely that funding
- 18 was available; is that fair?
- 19 A. Yes. I can definitely say that reading
- 20 this blog post did not make me think it was less
- 21 likely -- did not make me think it was less likely
- 22 funding was available.

Page 164 And -- and you understood, too, that there 14 Q. were many different reasons why a transaction at this 15 very early stage in the process might end up not 16 closing, correct? 17 Yes, I understood that it was not Α. 18 guaranteed to close. 19 Okay. And in fact, this transaction never 20 Q. came to fruition. 21 Do you have any information suggesting that 22 the reason this transaction did not ultimately close 23 24 was because of a lack of funding?

		Page	165
1	THE WITNESS: I do not have any such	3	
2	information.		
4	IIIOIMacion.		
	<u>-</u>		
	<u> </u>		

1	Page 167 REPORTER'S CERTIFICATE
2	I, LESHAUNDA CASS-BYRD, CSR No. B-2291, RPR,
3	Registered Professional Reporter, certify that the
4	foregoing proceedings were taken before me at the time
5	and place therein set forth, at which time the witness
6	was put under oath by me;
7	That the testimony of the witness, the questions
8	propounded, and all objections and statements made at
9	the time of the examination were recorded
10	stenographically by me and were thereafter
11	transcribed;
12	That the foregoing is a true and correct
13	transcript of my shorthand notes to taken.
14	I further certify that I am not a relative or employee
15	of any attorney or the parties, nor financially
16	interested in the action.
17	I declare under penalty of perjury under the laws
18	of North Carolina that the foregoing is true and
19	correct.
20	Dated this July 27, 2021.
21	Leshaunda Byrd
22	
23	LESHAUNDA CASS-BYRD, CCR-B-2291, RPR
24	
25	